

Agenda Item: 13-4
Meeting Dates: October 13 and 14, 2004

DIRECTOR'S REPORT

Budget

Nothing new to report.

Legislation

AB 2572 (Kehoe, Chapter 884, Statutes Of 2003) requires urban water suppliers to install water meters on all municipal and industrial services by January 1, 2025, and also requires urban water suppliers to begin charging those customers with meters volumetrically by January 1, 2010. This bill also requires urban water suppliers to demonstrate compliance with the water meter requirements when applying for State funds for wastewater treatment, water use efficiency, or drinking water treatment.

SB 117. (Machado, Chapter 716, Statutes of 2004) was signed into law on September 23, 2004. This bill requires each State implementing agency, to the maximum extent feasible, to provide outreach to disadvantaged communities to promote access to relevant Proposition 50 grant application and award information.

SB 1155 (Machado, Chapter 612, Statutes of 2004) was signed into law on September 21, 2004. This bill requires the Director of Department of Water Resources (DWR) in collaboration with the Secretary of the Interior to develop a plan by January 1, 2006 to meet the existing permit and license conditions for which the Department has an obligation. The bill also requires the plan to be developed and filed with the State Water Resources Control Board (SWRCB) and the California Bay-Delta Authority (Authority) prior to increasing the existing permitted diversion rate at Banks Pumping Plant.

SB 1353 (Perata, Chapter 484, Statutes of 2004) was signed into law on September 10, 2004. This bill makes various changes to the Political Reform Act of 1974 but most importantly revises the definitions of "designated employee" and "public official" to exclude any Federal officer or employee serving in an official Federal capacity on a State or local government agency. This will enable Federal members to participate fully in Authority meetings without triggering State financial disclosure laws.

Federal Authorization – The U.S. Senate amended and passed House Resolution 2828 on September 15 authorizing \$389 million to help implement the CALFED Bay-Delta

Program and provide for Federal agency participation in the California Bay-Delta Authority. The House must adopt the amended bill before it is sent to the President for signature. The 108th Congress is likely to adjourn on October 15; however, the possibility of a post-election session remains.

The following bills were vetoed by the Governor on September 30, 2004:

AB 2476 (Wolk) This bill would have required the Delta Protection Commission to review the existing Delta Resource Management Plan and identify changes and growth pressures in the primary zone; and identify nonurban land in the secondary zone, where conversion to an urban use could negatively impact resources in the primary zone. This bill would have also required a local public agency to modify and resubmit a local action that had been appealed to the Commission by an aggrieved party, and remanded to the local public agency, on the basis that the action is inconsistent with the Delta Resource Management Plan, the local General Plan or the Delta Protection Act of 1992.

SB 86 (Machado) would have established the Sacramento-San Joaquin Delta Conservancy Program within the State Coastal Conservancy to restore, enhance and protect the unique agricultural, economic, natural, cultural, recreational, public access and urban waterfront resources and opportunities of the Delta. This bill would have required the Conservancy to work with the Delta Protection Commission to implement appropriate goals and policies of a specified resource management plan adopted by the Commission.

CALFED Litigation Update (September 2004)

A. Programmatic Litigation

1. Federal case

Laub v. Babbitt, et al., U.S. District Court, Fresno

Plaintiffs: The California Farm Bureau Federation and several individual farmers.

Defendants: All Federal and State agencies participating in the CALFED Program. The State agencies recently named in the Farm Bureau's latest complaint are sued via their executive officers: Governor Schwarzenegger; Michael Chrisman, The Resources Agency (Resources); Terry Tamminen, Environmental Protection Agency (CalEPA); Celeste Cantu, State Water Resources Control Board (SWRCB); Lester Snow, DWR; Ryan Broddrick, Department of Fish and Game (DFG); Peter Rabbon, The Reclamation Board (Rec. Brd.); Margit Aramburu, Delta Protection Commission; Darryl Young, Department of Conservation (DOC); Will Travis, Bay Conservation and Development Commission (BCDC); Sandra Shewry, Department of Health Services (DHS); and A.G. Kawamura, Department of Food and Agriculture (CDFA).

Summary of Case: The Farm Bureau filed this case in September 2000. It alleges that the CALFED Programmatic Environmental Impact Statement/Environmental Impact Report (EIS/EIR) violates National Environmental Policy Act (NEPA) and the Administrative Procedures Act. It seeks an injunction against all State and Federal actions to implement the Record of Decision (ROD) until an adequate Programmatic EIS/EIR is prepared. The State defendants are apparently being sued under the theory that the Program is a joint Federal-State partnership that requires NEPA compliance under Federal law; and, therefore, the Federal government must comply with NEPA for all State projects, as well as Federal projects.

Current Status: The case is pending in the Federal district court. The district court dismissed an earlier version of the complaint as premature in August 2001. The Court of Appeals reversed that decision in September 2003. The Farm Bureau recently amended its complaint, and the State defendants filed an answer on February 2, 2004. A status conference was held on January 20, 2004. The administrative record was lodged on August 27, 2004, with the exception of a portion for which the Federal defendants have requested permission to file at a later date. Another status conference is set for November 1, 2004 to determine how the case will proceed.

2. State court cases

Laub v. Davis, et al., Court of Appeal, Third Appellate District (Sacramento)

Petitioners: California Farm Bureau Federation and several individual farmers

Respondents: State of California; The Resources Agency, Secretary of Resources; CalEPA, CalEPA Secretary

Summary of Case: The Farm Bureau filed this case in State court after the Federal district court dismissed a California Environmental Quality Act (CEQA) claim that had been part of their original NEPA lawsuit (described above). Defendants won all issues in the trial court and the Farm Bureau appealed. The Farm Bureau alleges that the CALFED Programmatic EIS/EIR violates CEQA and seeks an injunction of

all Program activities until the alleged CEQA violations are cured. This case has been coordinated in Sacramento Superior Court with *Regional Council of Rural Counties* (below).

Current Status: The State defendants won on all issues at trial. The case is now on appeal and the parties' briefing was completed on May 11, 2004. In June, The Nature Conservancy was permitted to file an amicus curiae brief supporting the Programmatic EIS/EIR. The Farm Bureau's response was filed on July 16, 2004.

Regional Council of Rural Counties v. State, et al., Court of Appeal, Third Appellate District (Sacramento)

Petitioners: Regional Council of Rural Counties, Central Delta Water Agency, South Delta Water Agency, and individual farmers

Respondents: State of California; The Resources Agency, Secretary of Resources; CalEPA, CalEPA Secretary (plus real parties in interest: Department of Water Resources, DWR Director; Department of Fish and Game, DFG Director; Patrick Wright [as Director of the CALFED Bay-Delta Program]; and numerous Federal agencies and officers)

Summary of Case: The complaint alleges that the CALFED Programmatic EIS/EIR violates CEQA and that the Project would harm the Delta. They also contend that the ROD is illegal under several water law theories. This case was coordinated in Sacramento Superior Court with *Laub v. Davis* (above), and the two cases have been consolidated on appeal.

Current Status: The State defendants won on all issues at trial. The case is now on appeal and briefing was completed on May 11, 2004.

B. Environmental Water Account Litigation

California Farm Bureau Federation v. Mike Chrisman, et al. Sacramento Superior Court

Petitioners: California Farm Bureau Federation

Respondents: The following State agencies were sued in addition to those directors and secretaries in their official capacities: Resources (Michael Chrisman); CalEPA (Terry Tamminen); CDFA (A.G. Kawamura); DWR (Lester Snow), DFG (Ryan Broddrick); DHS (Sandra Shewry); and California Bay-Delta Authority (Patrick Wright)

Summary of Case: On April 16, 2004, the Farm Bureau filed this CEQA action challenging the adoption of a Final EIS/EIR covering operation of the Environmental Water Account (EWA) through 2007, the end of the first stage of implementation of the CALFED Program. The Farm Bureau alleges the EIS/EIR does not adequately address "agricultural resources" when analyzing impacts, alternatives, mitigation, and other issues regarding operations of the EWA.

Current Status: The administrative record was lodged except for one portion, the reference material in Section D. The Farm Bureau has agreed to, and the court has approved, the lodging of Section D by October 8, 2004. The settlement meeting required by CEQA was held on May 27, 2004. A hearing date of December 10, 2004 has been set; and the parties will confer on briefing deadlines to meet this date.